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## **SUBCHAPTER 1. ORGANIZATION**

*N.J.A.C. 19:61-1.1 (2012)*

### **§ 19:61-1.1 Scope of rules**

The rules in this chapter shall constitute the practices and procedures of the State Ethics Commission and shall govern the activities of the Commission pursuant to *N.J.S.A. 52:13D-12* et seq.

### **§ 19:61-1.2 Meetings and offices**

The Commission shall meet at the call of its Chair upon not less than three days notice to members thereof. The Commission may maintain offices in such place or places as it may deem advisable.

### **§ 19:61-1.3 Presiding member**

The Chair shall preside, but in case of absence or inability to serve, the Vice Chair shall temporarily preside in his or her stead. In the absence of both, the senior member attending shall preside. Seniority of the members of the Commission shall be determined by the order of their respective appointments to the Commission.

### **§ 19:61-1.4 Quorum**

A quorum shall consist of a simple majority of the current members of the Commission. If the number of members is an even number, a quorum shall be half the number of current members plus one. If a quorum does not attend a session of the Commission, the presiding member shall adjourn the Commission, or, in the absence of all the members, the Executive Director or his or her designee shall adjourn the Commission from day to day.

### **§ 19:61-1.5 Executive or open meetings**

Meetings of the Commission, including open and executive sessions, shall be conducted in compliance with the provisions of the Open Public Meetings Act, *N.J.S.A. 10:4-6* et seq.

### **§ 19:61-1.6 Majority vote**

No determination of the Commission shall be rendered unless supported by the vote of members constituting a majority of the quorum present. Minutes of Commission meetings may be approved by a majority of members.

### **§ 19:61-1.7 Conflict with agency rules**

Any conflict between the rules established by the Commission and those developed by the various State agencies to implement their respective supplemental codes of ethics shall be resolved in favor of the rules established by the Commission.

#### § 19:61-1.8 Enlargement of time

A reasonable extension of time for the taking of any action for which these rules prescribe a time limitation may be granted by the Commission upon a clear showing of good cause and the absence of prejudice.

#### § 19:61-1.9 Administrative head

The Commission may appoint an Executive Director who shall serve as the administrative head of the Commission. In the absence of an administrative head, the Chair may designate an individual to serve as acting administrative head.

#### § 19:61-1.10 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Chair" and "Vice Chair" shall mean the members of the Commission designated by the Governor to serve as the Chair and Vice Chair thereof.

"Cohabitant" shall mean any person who is actually residing with the State official.

"Commission" shall mean the State Ethics Commission continued and established in but not of the Department of Law and Public Safety by the provisions of *N.J.S.A. 52:13D-12* et seq.

"Financial disclosure statement" means a comprehensive statement of assets, liabilities, business interests and sources of income which persons occupying certain positions in State government are required to file annually with the Commission pursuant to statute or Executive Order.

"Person" means any natural person, government entity, association, organization, firm, partnership or corporation.

"Preliminary investigation" means the investigative process undertaken by the Commission and/or its staff and/or a State agency's ethics liaison officer or State agency's ethics committee with regard to an allegation prior to review of and final action on the allegation by the Commission at a public meeting, pursuant to either *N.J.A.C. 19:61-3.1(h)* or (i).

"Relative" shall mean an individual's spouse, civil union partner, or domestic partner, or the individual's or spouse's, civil union partner's, or domestic partner's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse, civil union partner, or domestic partner by blood, marriage or adoption.

"State agency" means any of the principal departments in the Executive Branch of the State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

"State official" shall mean any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, *N.J.S.A. 52:13D-13(b)* and (e).

### **SUBCHAPTER 2. JURISDICTION**

#### § 19:61-2.1 Jurisdiction of the Commission

(a) The jurisdiction of the Commission shall extend to those situations arising under the provisions of *N.J.S.A. 52:13D-12* et seq., involving current and former State officials of the Executive Branch of the government, compensated members of the office staff of the Governor-elect, and as granted under the provisions of Executive Orders and any other statutes; and the Commission shall also have jurisdiction to enforce the provisions of *N.J.S.A. 5:12-58, 59, and 60*.

(b) All determinations made by State agencies with regard to the Conflicts of Interest Law or a Code of Ethics shall be filed with the Commission. It shall be within the discretion of the Commission to review said determinations and affirm, reverse or modify same.

#### § 19:61-2.2 Codes of ethics

(a) The Commission shall adopt a uniform ethics code to govern and guide the conduct of State officials. The uniform code shall be the primary code of ethics for State agencies.

1. Each State agency shall put into place a distribution procedure to ensure that each current State official and each new State official receives a copy of the uniform ethics code. Each State official shall sign a receipt indicating the date on which the uniform ethics code was received and an acknowledgment that the State official is responsible for reading the uniform ethics code and is bound by it. The receipt shall be maintained in the State official's personnel file.

(b) Each State agency may promulgate a supplemental code of ethics to address the particular needs and problems of the agency. The agency supplemental code of ethics shall be a supplement to the uniform code and shall recognize the uniform code as the primary code.

1. Each State agency shall submit its supplemental code of ethics to the Commission for approval.

2. A State agency supplemental code of ethics becomes effective upon approval of the Commission.

3. Each State agency shall put into place a distribution procedure to ensure that each current State official and each new State official receives a copy of the approved agency supplemental code of ethics. Each State official shall sign a receipt indicating the date on which the agency supplemental code of ethics was received and an acknowledgment that the State official is responsible for reading the agency supplemental code of ethics and is bound by it. The receipt shall be maintained in the State official's personnel file.

#### § 19:61-2.3 Plain Language Ethics Guide

(a) The Commission shall prepare a plain language ethics guide which provides a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning ethical standards applicable to State officials. The guide shall be prepared to promote ethical day-to-day decision making, to give general advice regarding conduct and situations, to provide easy reference to sources, and to explain the role, activities and jurisdiction of the Commission.

(b) Each State agency shall put into place a distribution procedure to ensure that each current State official and each new State official receives a copy of the plain language ethics guide, reviews it and understands its provisions.

#### § 19:61-2.4 Procedure where Commission is without jurisdiction

Whenever it shall appear that the Commission is without jurisdiction over a matter brought before it, the Commission's staff shall so notify the person bringing the matter, and, where possible, forward the matter to the proper agency for further action.

#### § 19:61-2.5 Access to documents

(a) Financial disclosure statements identified for public access on the Commission's website, pursuant to *N.J.S.A. 52:13D-21(n)*, pleadings related to a complaint, all final orders, decisions and formal Commission opinions shall be maintained by the Commission as documents available to the public. Requests for formal Commission advisory opinions and replies to requests for advisory opinions may be made available to the public after consideration by the Commission.

(b) Any person shall, upon request, be afforded an opportunity to examine a document, or a photocopy of any document, so maintained at the Commission offices, between 9:00 A.M. and 4:00 P.M. on business days.

#### § 19:61-2.6 Copies of documents; fees

(a) Photocopies of documents maintained by the Commission pursuant to *N.J.A.C. 19:61-2.5* shall be provided in accordance with the procedures and fees set forth in *N.J.S.A. 47:1A-1* et seq.

(b) Fees for photocopies shall be due and payable at such time as the photocopies have been prepared.

### **SUBCHAPTER 3. PROCEEDINGS**

#### **§ 19:61-3.1 Allegations; procedure**

(a) Every allegation received by the Commission shall be reviewed by the Commission's staff for an initial determination as to whether the alleged conduct falls within the jurisdiction of the Commission.

1. It shall be within the discretion of the Commission's staff to transfer those allegations involving the alleged violation of the Uniform Ethics Code or a supplemental ethics code, rule, or regulation promulgated by a State agency, to that agency for disposition in accord with its procedures.

2. It shall be within the discretion of the Commission's staff to transfer those allegations involving the alleged violation of another State statute to the appropriate enforcing authority.

3. Any preliminary investigation of an alleged ethics violation, whether conducted by Commission staff or a State agency, shall be confidential.

4. If during the course of a preliminary investigation Commission staff discovers additional potential ethics violations from the violation alleged in the initial complaint, staff may initiate a new investigation into the additional violations or may join this alleged misconduct with the existing preliminary investigation.

(b) In any situation where the Commission has jurisdiction over an allegation, the Commission shall conduct and complete a preliminary investigation of all allegations; such investigation may include interviews of the complainant, the State official involved, and any other individuals who possess knowledge of the circumstances surrounding the alleged conduct.

1. An investigation regarding a violation committed by a current State official may be initiated at any time during his or her State service.

2. An investigation regarding a violation committed by a former State official during his or her State service shall be initiated by the Commission not later than two years following the termination of his or her State service.

3. An investigation shall be considered initiated on the date a letter is sent to the State official advising him or her that he or she is the subject of an open investigation.

(c) At the beginning of the preliminary investigation, the Commission shall assign a case number to the allegation.

1. During the course of the preliminary investigation, the allegation shall be identified only by case number, not by the name of the State official involved, except in internal Commission communication and communication with the State official and/or his or her designee.

2. Throughout the preliminary investigation, whether conducted by the Commission or a State agency, the allegation shall be considered confidential.

3. The contents of the Commission's investigative file are confidential and shall not be released except upon the authorization of the Commission, or pursuant to court order or administrative rule.

4. Commission staff may disclose the contents of an investigative file to another State or Federal agency based on a belief that the contents of the file raise issues within that agency's jurisdiction.

5. After the final determination of a matter by the Commission and the expiration of any time for appeal, the Commission shall consider requests for information related to the completed matter. The Commission shall consider and determine whether the requester has a particularized need for the contents of the file and has established an inability to obtain the requested information from other sources. In its consideration, the Commission shall balance the requester's need against the public interest to maintain the confidentiality of the files.

(d) After the conclusion of the preliminary investigation, the Commission shall notify the State official(s) involved and the head of the State agency employing said State official(s) of the date of the meeting at which the Commission shall consider the preliminary investigation.

(e) If a Commission member holds office or employment in the same State agency which employs the State official named in the allegation, he or she shall recuse himself or herself from participation in any decisional process relating to that particular case.

(f) The Commission may, after review of the preliminary investigation, refer the allegation to the State agency of the State official(s) involved for appropriate action.

(g) If the Commission finds that there has been no violation of *N.J.S.A. 52:13D-12* et seq., or any code, rule, or regulation promulgated pursuant thereto, as alleged, it shall dismiss the allegation in open session at a Commission meeting. The Commission staff shall have the authority to dismiss a complaint that it determines to be frivolous.

(h) If the Commission determines that there are indications of a violation meriting further action, a complaint shall be set down for hearing at the Office of Administrative Law pursuant to the requirements of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, or the Commission may hold the hearing itself. If the Commission hears the matter, it shall follow the standards of the Administrative Procedure Act.

(i) Prior to the issuance of a complaint, Commission staff may engage in settlement negotiations with the State official and/or his or her designee.

(j) After the hearing is concluded, a decision shall be issued in accordance with the time frame set forth in the Administrative Procedure Act, *N.J.S.A. 52:14B-10*.

(k) If the Commission determines that the State official has violated the Uniform Ethics Code, the provisions of *N.J.S.A. 52:13D-12* et seq., or any code, rule, or regulation promulgated by any State agency pursuant thereto, it shall fine said State official in accordance with the provisions of *N.J.S.A. 52:13D-21(i)*. An assessed penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (*N.J.S.A. 2A:58-1*).

1. The Commission may further order or direct the State agency employing the State official to demote, censure or reprimand said State official, to obtain restitution from said State official, or to suspend said State official for a period not in excess of one year for each violation.

2. Should the Commission find that the conduct of said State official constitutes a willful and continuous disregard of the provisions of the Uniform Ethics Code, *N.J.S.A. 52:13D-12* et seq., or any code, rule or regulation promulgated by any State agency pursuant thereto, it may order or direct the State agency employing the State official to remove the State official from his or her office or employment and may further bar such person from holding any public office or employment in this State in any capacity whatsoever for a period of time not exceeding five years from the date on which he or she was found guilty by the Commission.

#### § 19:61-3.2 Subpoena for witnesses

(a) If the Commission's staff determines that the testimony of any person or persons is required, upon authorization of a member of the Commission in accordance with this subsection, it may issue a subpoena in the name of the Commission requiring such person or persons to appear and testify before the Commission staff, from day to day until the examination of such person or persons shall be completed. The Chair or, in his or her absence, the Vice Chair or, in the absence of both, another member, may make the determination, on behalf of the Commission, to issue a subpoena.

(b) The subpoena may also contain a direction that such person bring with him or her to the examination, any books, papers, or documents designated therein.

(c) If a person subpoenaed to attend any hearing refuses or fails to appear to be examined, or to answer any question or to produce any books, records, accounts, papers and documents when ordered to do so by the Commission, the Commission may apply to the Superior Court to compel the person to comply forthwith with the subpoena, directive or order of the Commission.

#### § 19:61-3.3 Subpoena for evidence

(a) If the Commission's staff determines that any document or physical evidence is required for a preliminary investigation, upon authorization of the Commission's Chair or another Commission member as described in (b) below, it may issue a subpoena in the name of the Commission requiring that the document or other piece of physical evidence be produced to the Commission staff.

(b) The Chair, or in his or her absence, the Vice Chair, or in the absence of both, another member, may make the determination, on behalf of the Commission, to issue a subpoena.

(c) If a document or other physical evidence is not turned over to the Commission, the Commission may apply to the Superior Court to compel the production of the evidence in compliance with the subpoena.

#### § 19:61-3.4 Allegation by member of Commission

Any member of the Commission may file an allegation with the Commission. Said allegation shall thereafter be treated in accordance with *N.J.A.C. 19:61-3.1*, except that the Commission member making the allegation shall recuse himself or herself thereafter from participating in any decisional processes having to do with that particular matter.

#### § 19:61-3.5 Allegation before State agency

(a) An allegation of a violation by a State official of the uniform ethics code or a code, rule, or regulation promulgated by a State agency pursuant to the provisions of *N.J.S.A. 52:13D-12* et seq., may be filed with the State agency employing said State official in accordance with the procedures established by the agency to process such allegations.

(b) Every allegation received by a State agency in accordance with (a) above shall be forwarded to the Commission along with a memorandum stating whether the agency will conduct a preliminary investigation or refer the matter to the Commission.

1. Any preliminary investigation by a State agency shall be confidential.

2. At the completion of a preliminary investigation conducted by a State agency, a summary of the agency's findings must be forwarded to the Commission along with the agency's recommendation on the matter.

(c) It shall be within the discretion of the Commission to direct the State agency to transfer the allegation to it in accordance with *N.J.A.C. 19:61-3.1*.

#### § 19:61-3.6 Determination by State agency

Notice of all determinations made by State agencies in connection with hearings conducted pursuant to *N.J.A.C. 19:61-3.1* shall be filed with the Commission. All determinations with respect to the Conflicts of Interest Law, *N.J.S.A. 52:13D-12* et seq. which involve the removal of a State official or any other disciplinary actions shall be effective when approved by the Commission. An agency that has received authorization from the Commission to proceed with a disciplinary action against an employee for ethics violations, pursuant to *N.J.S.A. 52:13D-23(d)*, shall advise the Commission of the final disposition of any discipline imposed.

#### § 19:61-3.7 Relaxation of rules

The rules set forth in this subchapter regarding the procedural requirements for the filing of complaints may be relaxed by the Commission in any instance where it shall be manifest to the Commission that a strict adherence to them will work surprise or injustice. In any matter not expressly controlled by these rules or by statute, the Chair shall exercise his or her discretion.

### **SUBCHAPTER 4. ADVISORY OPINIONS**

#### § 19:61-4.1 Requests for advisory opinions

Requests for advisory opinions concerning whether a given set of facts and circumstances would in the Commission's opinion constitute possible violations of *N.J.S.A. 52:13D-12* et seq., or any code, rules or regulations promulgated pursuant thereto, may be made by any person or persons. Advisory opinions rendered pursuant to this section are only binding as to the facts and circumstances reviewed and considered in the specific request. The Executive Director or designee shall have discretion to determine a format appropriate to the circumstances of each request.

### **SUBCHAPTER 5. GENERAL PROVISIONS**

#### § 19:61-5.1 Investigations and hearings

The Commission shall have the power to undertake investigations and hold hearings into matters having relevance to the provisions of *N.J.S.A. 52:13D-12* et seq., whether or not an allegation has been filed or request for advisory opinion made, and to this end, the full investigative authority and subpoena power of the Commission shall obtain and be available as required.

#### § 19:61-5.2 Publication

(a) The Chair of the Commission shall cause to be filed with the Office of Administrative Law:

1. All advisory opinions of the Commission rendered pursuant to *N.J.S.A. 52:13D-21(g)*; and
2. Notice of any disciplinary action taken by the Commission pursuant to *N.J.S.A. 52:13D-21(i)*.

§ 19:61-5.3 Validity of rules of any portion declared invalid

If any rule, sentence, paragraph or section of these rules or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

§ 19:61-5.4 Procedures to request Commission action to promulgate, amend or repeal rules

(a) Persons requesting Commission action to promulgate, amend or repeal rules shall comply with *N.J.S.A. 52:14B-4(f)* and any amendments thereto and any implementing rules as adopted by the Office of Administrative Law.

(b) Such persons may obtain forms for petitioning the Commission's Administrative Code Rules from the Commission.

(c) When considering the petition, the Commission shall comply with the time lines and procedures contained in *N.J.S.A. 52:14B-4(f)*.

§ 19:61-5.5 Positions in State government with responsibility for matters affecting casino activity

(a) The Commission has, in consultation with the Attorney General's Office, determined that the following positions in State government have responsibility for matters affecting casino activity and therefore are subject to the restrictions of the Casino Ethics Amendment ( *N.J.S.A. 52:13D-17.2*):

1. Department of Environmental Protection; Land Use Regulation Program; or successor agencies:

i. Bureau of Coastal Regulation or successor agency (One chief and three regional supervisors classified as Supervising Environmental Specialists or successors performing those functions);

ii. Tidelands Resources Council or successor agency (members of the Council);

2. Department of Community Affairs (Division of Codes and Standards) or successor agencies:

i. Bureau of Construction Project Review or successor agency (Chief; assistant chief; supervisor, plans approval or successors performing those functions);

ii. Bureau of Housing Inspection or successor agency (Chief; supervisor, Housing Code Compliance assistant regional supervisor, Housing Code Enforcement or successors performing those functions);

3. State Athletic Control Board or successor agency (Commissioner; three members or successors performing those functions).

(b) The list in (a) above is in addition to the persons identified in *N.J.S.A. 52:13D-17.2(a)* as being covered by the provisions of the Casino Ethics Amendment.

§ 19:61-5.6 Financial disclosure statements

(a) On an annual basis, each State agency shall, upon request of the Commission, identify each State official within the agency who is required by law or Executive Order to file a financial disclosure statement.

(b) The Commission shall provide instructions for filing the financial disclosure statement to each person identified by a State agency as a person required by law or Executive Order to file a financial disclosure statement.

(c) The Commission shall impose a civil penalty for failure to file a financial disclosure statement. The penalty shall be \$ 50.00 for each day of the violation, and may be collected in a summary proceeding pursuant to the Penalty Enforcement Law ( *N.J.S.A. 2A:58-1*).

(d) A financial disclosure statement required to be submitted to the Commission by law, regulation or executive order shall be made available to the public on the Internet site of the Commission promptly after receipt and review by the Commission.



#### § 19:61-5.7 Restrictions on employment

(a) Relatives of persons in the positions in (a)1 through 6 below in State government are subject to the employment restrictions set forth in this subsection and (b) below.

1. A relative of the Governor shall not be employed in an office or position in the unclassified service of the civil service of the State in the Executive Branch of State government.

2. A relative of a commissioner or head of a principal department in the Executive Branch of State government shall not be employed in an office or position in the unclassified service of the civil service of the State in the principal department over which the commissioner or head of the principal department exercises authority, supervision, or control.

3. A relative of an assistant or deputy commissioner or head of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the assistant or deputy commissioner or head serves, but shall not be assigned to a position over which the assistant or deputy commissioner or head exercises authority, supervision, or control.

4. A relative of a head or assistant head of a division of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the head or assistant head of a division serves, but shall not be assigned to a position over which the head or assistant head exercises authority, supervision, or control.

5. A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State shall not be employed in an office or position in that independent authority, board, commission, agency or instrumentality.

6. A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency shall not be employed in an office or position in that bi-state or multi-state agency, to the extent permitted by law.

(b) A State official of a State agency in the Executive Branch shall not supervise, or exercise authority with regard to personnel actions over, a relative or cohabitant of the State official.

(c) All State agencies subject to the jurisdiction of the Commission shall develop written procedures that require State officials to disclose information sufficient to determine whether the employment of any individual within the agency is prohibited by (a) or (b) above. A State official shall contact his or her agency ethics liaison officer or the Commission for guidance as necessary to determine whether an employment relationship is prohibited by (a) or (b) above.

(d) If it is determined by the agency ethics liaison officer and/or the Commission that there exists a situation wherein a State official supervises or exercises authority with regard to the personnel actions over his or her relative or cohabitant, then appropriate measures shall be taken by the agency to screen the State official from exercising such supervision or personnel authority. Examples of such screening measures may include, but are not limited to, creating alternate reporting relationships, reassigning the employee's position, or a combination of these adjustments.

#### § 19:61-5.8 Agency compliance audits

(a) The Commission's Compliance Officer shall conduct systematic ethics audits of State agencies at such intervals and in such a manner as directed by the Commission. These audits shall determine whether an agency, its employees and special State officers and employees are in compliance with the reporting, documentation, training and other ethics requirements contained in the New Jersey Conflicts of Interest Law, Executive Orders, regulations, codes and rulings of the Commission.

(b) Each agency subject to an ethics audit shall provide, upon the request of the Commission's Compliance Officer, any documents and information necessary to complete the compliance audit.

(c) Upon completion of an agency ethics audit, the Compliance Officer, with the concurrence of the Commission's Executive Director, will determine if the agency is in substantial compliance with the State's ethics laws. If it is determined that the agency has deficiencies and/or is not in substantial compliance with the State's ethics laws, then the agency head and the agency Ethics Liaison Officer will be notified of this conclusion and provided a reasonable time frame from within which the agency must remedy the deficiencies identified in the compliance audit report.

#### § 19:61-5.9 Outside activity and conflict of interest questionnaires

(a) Every State officer and employee shall obtain the approval of his or her agency's Ethics Liaison Officer prior to engaging in any of the following outside activities:

1. Any business, trade, profession or other compensated employment including the acceptance of compensation for a speech or published work;
2. Any uncompensated or volunteer work for or with any entity;
3. Serving in any office or title in the governing or advisory board of any entity; or
4. Serving in any elected or appointed public office in any unit of government, except in an ex-officio capacity.

(b) Notwithstanding the requirement in (a) above, a State agency, upon notification to the Commission, may exempt disclosure of specific kinds of outside employment or activities if the agency and the Commission conclude that such employment or activity would not likely present a conflict of interest.

(c) Every State employee and officer is required to complete and file with his or her agency's Ethics Liaison Officer the Commission's Outside Activity Questionnaire upon commencing State employment and at such intervals as required by his or her agency and the Commission. Every State employee and officer shall, however, at a minimum complete and file a new Outside Activity Questionnaire with his or her agency's Ethics Liaison Officer every three years, and whenever there is a change in the employee or officer's outside activity or State employment.

(d) A State agency may require disclosure of additional information regarding the outside activities of its employees as necessary to address the particular needs of the agency.

(e) Each State agency shall develop and distribute a conflict of interest questionnaire for special State officers and special State employees of the agency.

(f) It is the responsibility of each agency to develop a process for the review and retention of both the Outside Activity Questionnaire and conflict of interest questionnaire.

(g) Each agency Ethics Liaison Officer shall review Outside Activity Questionnaires and conflict of interest questionnaires submitted by employees of the agency to determine whether the outside activities are permissible in accordance with the Conflicts of Interest Law, the Uniform Ethics Code and other applicable agency supplemental code or authority. A State officer or employee, or special State officer or employee, may appeal an agency Ethics Liaison Officer's decision to disapprove an outside activity. Such appeal shall be submitted in writing to the Commission within 60 days of the employee's receipt of the agency decision. The appeal shall cite the relevant section(s) of the Conflicts Law, Uniform Ethics Code and supplemental agency code or other authority which supports the position of the employee that such outside activity should be permitted.

## **SUBCHAPTER 6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS, AND ACCEPTANCE OF THINGS OF VALUE**

### **§ 19:61-6.1 Applicability**

The rules in this subchapter apply to all State officials in the Executive branch of State government.

### **§ 19:61-6.2 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

"Approval" means, for the purposes of *N.J.A.C. 19:61-6.4* and *6.5*, written permission from the department head to attend and/or participate in an event and/or to accept direct or indirect benefits in connection with attendance.

"Department head" means the administrative or executive head of the State official's agency or his or her designee.

"Direct benefit" means acceptance by a State official from the event sponsor or any other person of travel, meals, accommodation, waiver of conference or event fee or any other costs associated with attending the event for which no payment is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, is sponsored or co-sponsored by a supplier or a non-State government source and the invitation for which is extended to the State official because of his or her official position. Meetings that are part of an employee's job responsibilities at which no direct or indirect benefits are offered are not "events" for purposes of this subchapter.

"Indirect benefit" means acceptance by a State official from the event sponsor or any other person of reimbursement for costs of travel, meals, accommodation, event fees, or any other costs associated with attending the event for which no reimbursement is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"Interested party" means:

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority of the State official's agency;
2. Any grantee or grantor of the State official's agency, or employee, representative or agent thereof;
3. Any supplier, or employee, representative or agent thereof;
4. Any organization that advocates or represents the positions of its members to the State official's agency; or
5. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

"Personal funds" means funds of a State official. It does not include funds that are loaned, advanced, promised or reimbursed to a State official for any purpose by an interested party.

"Published work" means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software.

"Reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive.

"Scholarly capacity" means any pedagogical, academic, artistic, educational or scholarly activity performed by a State official for the institution of higher education that employs or has appointed such State official.

"Supplier" means any person that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to the State official's agency, including, but not limited to, consultants, vendors and lessors.

"Thing of value" includes, but is not limited to, compensation; money; a stock, bond, note or other investment in an entity; employment, offer of employment; gift; reward; honorarium; favor; goods, service; loan; forgiveness of indebtedness; gratuity; property or real property; labor; fee; commission; contribution; rebate or discount in the price of any thing of value; an automobile or other means of personal transportation; entertainment; meal; or any other thing of value offered to or solicited or accepted by a State official in connection with his or her official position.

#### § 19:61-6.3 Granting of approval

(a) For the purposes of *N.J.A.C. 19:61-6.4* and 6.5, when a department head grants approval to attend an event, the department head shall determine whether a legitimate State purpose will be served by attendance and shall consider the provisions of the Conflicts of Interest Law, the Uniform Ethics Code and an agency supplemental code of ethics, if applicable, any Executive Orders, the guidelines and rules of the Commission, any departmental administrative policies and any other relevant considerations. Relevant considerations include, but are not limited to:

1. The identity of the sponsor;
2. The purpose of the event;
3. The identity of other expected participants;
4. Whether attendance and/or participation in the event will assist the State official in carrying out his or her official duties and support the mission of the agency; and
5. The monetary value and character of the costs and benefits provided by the sponsor, including whether the costs and benefits are comparable to those offered to or purchased by other attendees.

(b) Approval shall be requested in writing on the form provided in *N.J.A.C. 19:61-6.8*. Such forms shall be retained by the State agency for a period of five years from the date of approval of the form.

(c) When an agency has numerous divisions or similar subunits with very diverse missions, the department head may designate that such divisions rather than the department be treated as agencies for the purposes of this subchapter. The department head shall provide the Commission with information identifying the diversity of the missions of the divisions and justifying their treatment as separate agencies.

§ 19:61-6.4 Attendance at an event sponsored by an interested party

(a) The State official shall secure the prior approval of his or her supervisor and the agency Ethics Liaison Officer to attend such an event.

(b) Except as provided in (c) or (d) below:

1. The State shall pay the reasonable expenses of the State official associated with attending the event.
2. Neither the State official nor the State shall receive any direct or indirect benefit from any other source.

(c) The requirement and prohibition in (b) above need not apply if the event is designed to provide training, dissemination of information, or the exchange of ideas and the State official is making a speech, is participating in a panel at the event or is an accompanying resource person for the speaker and/or participant, subject to the reasonable approval of the department head. The direct or indirect benefit provided to the State official by the sponsor of the event may include the following:

1. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;
2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$ 500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$ 500.00 per trip limitation shall not apply if the reimbursement or payment is made by:
  - i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State;
  - ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or
  - iii. Any agency of the Federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(d) The requirements and prohibitions in (a) and (b) above shall not apply to a State official, acting in a scholarly capacity, attending, participating in, or making presentations at colloquia, seminars, conferences, or similar scholarly gatherings, so long as the State official notifies his or her department head of his or her attendance, participation or presentation. The direct or indirect benefit provided to the State official, acting in a scholarly capacity, may include the acceptance of reasonable travel and subsistence expenses and allowable entertainment expenses. The State official, acting in a scholarly capacity, may accept an honorarium, academic prize or other thing of value if the honorarium, academic prize or other thing of value reflects payment for orally sharing his or her intellectual property.

(e) If an actual conflict or the appearance of a conflict could arise under the application of (c) or (d) above, (b) above shall govern.

(f) Approvals granted under (c) above must be forwarded to the Commission for review.

(g) The State official may pay his or her own expenses with his or her personal funds.

(h) Except as provided in (d) above, the State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

*Examples*

An employee of the Department of Environmental Protection has been invited to attend a conference of the Association of Environmental Authorities and has been asked to present a short program to explain a new series of forms being proposed by the Department. The Association has offered to waive the \$ 200.00 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the Department head approves the employee's attendance and participation in the conference, the employee may accept the waiver of the fee and the refreshments and meal included in the program. A copy of the Department head's approval must be forwarded to the Commission.

The Motor Vehicle Commission (MVC) is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several MVC employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the

demonstration, but because the company plans to submit a bid to provide this equipment and is therefore an interested party with respect to the MVC, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

Three employees from different units of the Department of Transportation are responsible for weekly monitoring of a construction project. Each Friday morning, they meet with the contractor's representative at the site field office to review the week's progress and to assess projected schedules. The meetings generally last one to two hours; coffee is available, but no other refreshments or meals are served or offered. Because no direct or indirect benefits are offered or provided and because the meetings are part of the employees' job responsibilities, the meetings are not "events" for the purposes of this subchapter.

A professor from a State law school, who has published extensively in the field of Constitutional Law, has been invited, by the publisher of legal textbooks, to attend a symposium and make a presentation on current trends in Constitutional Law. The publisher has offered to waive the costs of the symposium and pay for the professor's transportation, hotel, and meals during the symposium. In addition, each speaker will receive a \$ 1,000 honorarium. At the conclusion of the symposium, the publisher has offered to send the professor on a golf retreat to thank the professor for her participation in the symposium. Because the symposium is part of the professor's scholarly activities, she would be attending in her scholarly capacity and the honorarium reflects a payment for an oral presentation of her own intellectual property, the professor may accept the reasonable travel and subsistence expenses and the honorarium. However, the professor may not accept the golf retreat because the retreat is not an allowable entertainment expense.

#### § 19:61-6.5 Attendance at an event sponsored by an entity other than an interested party

(a) The State official shall secure the prior approval of his or her supervisor and the agency Ethics Liaison Officer to attend such an event.

(b) The State official, acting in a scholarly capacity, may attend, participate in, or make presentations at colloquia, seminars, conferences, or similar scholarly gatherings, so long as the State official notifies his or her department head of his or her attendance, participation or presentation, in which case (a) above need not apply. The direct or indirect benefit provided to the State official, acting in a scholarly capacity, may include the acceptance of reasonable travel and subsistence expenses and allowable entertainment expenses. The State official, acting in a scholarly capacity, may accept an honorarium, academic prize or other thing of value if the honorarium, academic prize or other thing of value reflects payment for orally sharing his or her intellectual property.

(c) The State may pay the reasonable expenses of the State official associated with attending the event or may permit the State official to accept direct or indirect benefits. Direct or indirect benefits may include the following:

1. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$ 500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$ 500.00 per trip limitation shall not apply to State officials acting in a scholarly capacity or if the reimbursement or payment is made by:

- i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State;
- ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or
- iii. Any agency of the Federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(d) An interested party shall not provide a direct or indirect benefit to the State official in order to facilitate his or her attendance unless in accordance with (b) above.

(e) A State official making a speech or presentation at the event shall not accept an honorarium or fee from the sponsor unless in accordance with (b) above.

(f) Under no circumstances shall a State official accept entertainment collateral to the event, such as a golf outing, or meals taken other than in a group setting with all attendees, or reimbursement therefor.

#### *Examples*

An employee of the Commerce, Economic Growth and Tourism Commission has been invited, by the Mexican Tourist Bureau, an agency of the Mexican government, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at dinner on the final day of the meetings and has been offered a \$ 500.00 honorarium. The employee may attend the meetings but is not permitted to accept an honorarium in connection with his speech. He may accept, directly or by reimbursement, actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State, not to exceed the statutory limit of \$ 500.00.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant at the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant's picture, name and official title on the promotional literature. The Technical Assistant may attend the event but is prohibited from allowing such use of his official title for fundraising purposes.

A history professor at a State college has been asked by his department head to attend the dedication of a restored historic house museum and speak about the importance of maintaining New Jersey's historic resources. The professor has produced several films about New Jersey historic houses. The historic association has offered to provide the professor with a \$ 300.00 honorarium for his attendance and speech. The professor may attend the event and accept the honorarium since the professor is attending in his scholarly capacity, the event relates to his scholarly activities and the honorarium is essentially a payment for his oral presentation of his own intellectual property.

#### § 19:61-6.6 Use of official title for private fundraising events or promotional activities

A State official shall not permit the use of his or her official title for the purpose of fundraising for, or promotion of, a private organization. A State official may be referred to as "the Honorable" when being honored at a fundraising event or promotional activity for a private organization.

#### § 19:61-6.7 Compensation for published work(s)

(a) Except as provided in (e) below, a State official shall not accept compensation for published work(s) created as part of his or her official duties on State time utilizing State resources, but may accept compensation for published works not created as part of his or her official duties.

(b) A State official shall secure the permission of the department head to accept compensation for published work(s) not created as part of his or her official duties. In determining whether such approval can be granted, the Department head shall consider the provisions of the Conflicts of Interest Law, the Uniform Ethics Code, an agency's supplemental code of ethics, if applicable, any applicable Executive Orders, the Commission's Guidelines Governing Outside Activities, any other applicable guidelines or rules of the Commission, any applicable administrative policies of the agency, and the following conditions:

1. Whether compensation is being paid by an interested party;
2. Whether the published work(s) uses or discloses information not generally available to the public;

(c) The State official shall prepare the published work(s) on his or her own time, without using the services of other State officials or resources owned by the State.

(d) Except as provided in (e) below, the State official shall not use his or her official title in any way in soliciting compensation.

(e) A State official acting in a scholarly capacity may accept compensation for published works created as part of his or her official duties on State time utilizing State resources.

(f) A State official acting in a scholarly capacity may require the use of his or her own published work in a course that he or she teaches. However, monies resulting from such use must be donated to the college or university or other nonprofit institution.

(g) A State official acting in a scholarly capacity may accept compensation for the use of his or her published work in a course that he or she does not teach, provided that he or she was not involved in the selection of the published work for use in that course.

#### *Examples*

As part of his official duties, a Department of Transportation employee evaluates surveying equipment and trains Department employees on its use. The employee recently completed an in-depth evaluation of 10 different types of surveying instruments and made a recommendation to the purchasing unit. The employee would like to publish the entire report in Transportation Magazine. He has been offered \$ 500.00 for the article. The Department must make a policy decision as to whether the article

may be published. The employee is prohibited from accepting compensation for the article, even if the Department grants permission for the publication, since it was created as part of his official duties prepared on State time and utilizing State resources.

An Environmental Technician at the Department of Environmental Protection has been asked to write an article for an environmental journal on how New Jersey's automobile emission standards differ from those of Pennsylvania. He has been offered \$ 500.00 for the article. The Environmental Technician is permitted to publish the article and receive compensation since it is on a subject matter related to, but not a part of, his official duties, so long as he prepares the article at home, on his own time, without using any State resources.

§ 19:61-6.8 Approval request form

State officials shall use the following form to request approval to attend events.

REQUEST FOR APPROVAL FOR

ATTENDANCE AT EVENT

DEPARTMENT OF \_\_\_\_\_

Name \_\_\_\_\_ Division \_\_\_\_\_

Title \_\_\_\_\_ Telephone \_\_\_\_\_ FAX \_\_\_\_\_

E-mail address \_\_\_\_\_

Event \_\_\_\_\_

Sponsor \_\_\_\_\_

Is the sponsor an "interested party"? Yes \_\_\_\_ No \_\_\_\_ "Interested party" means: 1) any person or entity your institution regulates, licenses or supervises; 2) any grantee or grantor to your institution and any employee, representative or agent thereof; 3) any supplier/vendor to your institution; 4) any advocacy group that advocates or represents the positions of its members to your institution; 5) any organization a majority of whose members fall under 1-4 above.

Is the State official a speaker, panel participant or resource person?

Yes \_\_\_\_ No \_\_\_\_

Is the sponsor an agency of the federal government, one or more other states or a political subdivision thereof? Yes \_\_\_\_ No \_\_\_\_

Is the sponsor a nonprofit organization? Yes \_\_\_\_ No \_\_\_\_

If Yes, is the employee or agency a member? Yes \_\_\_\_ No \_\_\_\_

Does the nonprofit organization have any contracts with the State?

Yes \_\_\_\_ No \_\_\_\_

Location \_\_\_\_\_ Date(s) \_\_\_\_\_

Overnight accommodation required? Yes \_\_\_\_ No \_\_\_\_

Out-of-state travel required? Yes \_\_\_\_ No \_\_\_\_

Estimated total costs? \$ \_\_\_\_\_

Breakdown of Costs: Transportation \$ \_\_\_\_\_ Meals \$ \_\_\_\_\_

Accommodations \$ \_\_\_\_\_ Registration Fees \$ \_\_\_\_\_

Agency to pay costs? Yes \_\_\_\_ No \_\_\_\_

Sponsor to pay costs? Yes \_\_\_\_ No \_\_\_\_

Employee to pay costs? Yes \_\_\_\_ No \_\_\_\_

Other person or entity to pay costs? Yes \_\_\_\_ No \_\_\_\_ If yes, note name below:

\_\_\_\_\_

Reason for attendance: \_\_\_\_\_

Will sponsor offer an honorarium or fee? Yes \_\_\_\_\_ No \_\_\_\_\_

Check: \_\_\_\_\_ Copy of invitation letter attached.

\_\_\_\_\_ Copy of agenda or other description of event attached.

Employee Signature \_\_\_\_\_

Date \_\_\_\_\_

Supervisor's Signature and Approval \_\_\_\_\_

Date \_\_\_\_\_

NOTE: Any substitutions or changes of circumstances must be reported to your ELO.

\*\*\*\*\*

SPACE BELOW FOR ELO USE ONLY

Attendance approved Yes \_\_\_\_\_ No \_\_\_\_\_ Note: Acceptance of honoraria or fees is not permitted.

Condi-  
tions: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Ethics Liaison Officer

\_\_\_\_\_ Sponsor is an interested party and employee will be accepting event benefits as a speaker, panelist or resource person.  
A copy of form will be forwarded to the State Ethics Commission pursuant to *N.J.A.C. 19:61-6.4(f)*.

#### § 19:61-6.9 Solicitation or acceptance of a thing of value

(a) Except in accordance with the Commission's rules on attendance at events, *N.J.A.C. 19:61-6.4* and 6.5 and compensation for published works, *N.J.A.C. 19:61-6.7*, no State official, whether by himself or herself or through his or her spouse, or member of his or her family or through any partner or associate shall solicit or accept, directly or indirectly, any thing of value that is related in any way to the State official's public duties.

(b) A State official must disclose and remit to his or her Department head or the Department head's designees any offer or receipt of any thing of value that is related in any way to the State official's public duties.

(c) The Department head or his or her designee shall return the thing of value to the donor or, in the case of a perishable thing of value, transfer it to an appropriate nonprofit entity in the name of the donor.

(d) A State official or his or her agency may retain and use unsolicited gifts or benefits of trivial value, such as complimentary articles offered to the general public, and gifts received as a result of mass advertising mailings to the general business public if such use does not create an impression of a conflict of interest or a violation of the public trust. An impression of a conflict may be created, for example, if a State official in a regulatory agency uses a pocket calendar conspicuously marked with the name of a company that it regulates or if an office in a State agency displays a wall calendar from a vendor, creating the impression of endorsement. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, (c) above shall govern. The provisions of (b) and (c) above and (e) below do not apply to items of trivial value.

(e) The Department head or his or her designee shall keep records of all such occurrences, names of the State officials, individuals, and companies involved, and the final disposition of the thing of value.

(f) Notwithstanding (a) through (e) above, a State official, acting in a scholarly capacity, may accept an honorarium, academic prize or other thing of value if the honorarium, academic prize or other thing of value reflects payment for sharing his or her intellectual property orally or in writing, acting in an editorial capacity for a journal or other publication or reviewing journal or book manuscripts, or grants or contract proposals, or participating in accreditation or other peer review activities.

#### § 19:61-6.10 Annual disclosure for scholarly capacity employees



(a) A State official serving in a scholarly capacity shall disclose annually to his or her department head any travel, subsistence or entertainment expenses, honoraria, academic prizes, or other things of value related to activities performed in his or her scholarly capacity received in the prior academic year (July 1st through June 30th). The sources of all such expenses and things of value shall be identified.

(b) A State official serving in a scholarly capacity shall use the following form for his or her annual disclosure. The completed forms shall be submitted to his or her department head, and the form shall be kept on file for a period of five years. Each State college and university shall forward copies of the forms to the Commission on an annual basis.

Annual College and University Disclosure Form

Date of Statement \_\_\_\_\_

For Academic Year July 1, \_\_\_\_ through June 30, \_\_\_\_\_

First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Institution \_\_\_\_\_

Department \_\_\_\_\_

Position \_\_\_\_\_

Daytime Telephone \_\_\_\_\_

Email Address \_\_\_\_\_

Instructions: This form must be submitted pursuant to *N.J.A.C. 19:61-6.10(a)*, which requires a State official serving in a scholarly capacity to annually disclose to his/her Department head any travel, subsistence or entertainment expenses, honoraria, academic prizes or other things of value related to activities performed in a scholarly capacity received in the prior academic year (July 1st through June 30th). Any benefit received related to your State position, and any outside activity performed, while not acting in a scholarly capacity, must still be reported pursuant to your institution's procedures, and on the forms required by the State Ethics Commission. Enter "N/A" in any category in which you did not receive benefits while acting in scholarly capacity during the covered academic year.

Benefits Received

A. Travel, Subsistence and Entertainment Expenses

Date Received	Type of Benefit	Amount	Source	Interested Party*
1.				
2.				
3.				
4.				

B. Honoraria, Academic Prizes or Other Things of Value

Date Received	Type of Benefit	Amount	Source	Interested Party*
1.				
2.				
3.				
4.				

\*Indicate whether the source of the benefit is an interested party to your institution. "Interested party" means: 1) any person or entity your institution regulates, licenses or supervises; 2) any grantee or grantor to your institution and any employee, representative or agent thereof; 3) any supplier/vendor to your institution; 4) any advocacy group that advocates or represents the positions of its members to your institution; 5) any organization a majority of whose members fall under 1-4 above.

C. Assigned Educational Texts or Materials

1. Do you assign educational books or materials authored by you as a course requirement?

Yes\_\_\_\_\_ No\_\_\_\_\_

2. If answer to question 1 is yes, do you receive royalties from those educational materials?

Yes\_\_\_\_\_ No\_\_\_\_\_

3. If answer to question 2 is yes, did you donate those royalties?

Yes\_\_\_\_\_ No\_\_\_\_\_

4. If answer to 3 is yes, where were the royalties donated?

---

To the best of my knowledge and belief the information on this form is true and accurate.

EMPLOYEE: \_\_\_\_\_ Date:\_\_\_\_\_

Signature

I have reviewed the information contained on this form.

DEPARTMENT HEAD: \_\_\_\_\_ Date:\_\_\_\_\_

Signature

ETHICS

LIAISON OFFICER: \_\_\_\_\_ Date:\_\_\_\_\_

Signature

## **SUBCHAPTER 7. RECUSAL PROCESS**

### **§ 19:61-7.1 Purpose**

The purpose of this subchapter is to provide State officials with guidance regarding the circumstances under which a State official must recuse himself or herself and procedures as to properly effectuating a recusal.

### **§ 19:61-7.2 Scope**

The rules in this subchapter apply to all State officers and employees and to all special State officers and employees as defined in the Conflicts of Interest Law, *N.J.S.A. 52:13D-13(b)* and (e), which definitions are incorporated in *N.J.A.C. 19:61-1.10*.

### **§ 19:61-7.3 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Recusal" means the process by which a person is disqualified, or disqualifies himself or herself, from a matter because of a conflict of interest.

"Relative" means a spouse, civil union partner or domestic partner, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, or first cousin, whether in whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such person.

### **§ 19:61-7.4 Situations where recusal is required**

(a) A State official is required to recuse himself or herself from an official matter that involves any private sector individual, association, corporation or other entity that employed or did business with the State official during the one year prior to the official's commencement of State service. This recusal shall remain in effect for one year after the commencement of the official's State service.

(b) A State official is required to recuse himself or herself on an official matter if he or she had involvement in that matter, other than on behalf of the State, prior to commencement of his or her State service. Involvement in a matter includes, but is not limited to, having supervisory responsibility, providing input, submitting reports, signing contracts, having access to confidential information, or being substantially and directly involved in decision-making with regard to the official matter. The recusal shall remain in effect until the agency no longer has any interest in the matter.

(c) A State official is required to recuse himself or herself from an official matter that involves any individual, association, corporation or other entity from which the State official received a campaign contribution, individually or in the aggregate, in an amount required to be reported by N.J.A.C. 19:25-10. Recusal is required regardless of whether the State official is elected to the office or position associated with the campaign contribution. The recusal shall remain in effect until the expiration of the term of office which the State official was seeking when the contribution was made.

(d) A State official must recuse himself or herself from an official matter if he or she has:

1. Any financial interest, direct or indirect, that is incompatible with the discharge of the State official's public duties; or
2. Any personal interest, direct or indirect, that is incompatible with the discharge of the State official's public duties.

(e) For purposes of (d) above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; or a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.

(f) An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of (d) and (e) above, depending on the totality of the circumstances. A State official should contact his or her agency ethics liaison officer or the Commission for guidance in such cases.

(g) A State official must seek the advice of the State agency's counsel, agency ethics liaison officer or the Commission as to the propriety of participation in a matter if any person requests that a State official recuse himself or herself from that matter. Oral advice, followed up by a writing, may be provided by the agency's counsel, the agency ethics liaison officer or the Commission to avoid delay. Oral advice should subsequently be memorialized by a writing or by inclusion in public minutes.

#### *Examples*

1. The spouse of the Director of the Division of Solid and Hazardous Waste (Division), Department of Environmental Protection, recently became a partner in ABC, an environmental consulting firm that represents clients before the Division. The Director must recuse himself from any involvement with ABC matters that come before the Division. The recusal must be memorialized in writing and conform to the standards of *N.J.A.C. 19:61-7.5(b)*.

2. The Director of a program that regulates health insurance carriers has been approached about possible employment by a regulated entity. The entity does not currently have any specific cause, proceeding, application or other matter pending. The solicitation must immediately be disclosed to the Director's supervisor and the Department Ethics Liaison Officer to avoid a situation where the State official may appear to be using his or her official position to gain an unwarranted advantage. The circumstances surrounding the solicitation and the State official's official interactions with the entity must be reviewed before the official proceeds with any job-seeking activities. If it is determined that the State official may respond to the solicitation, he must recuse himself from any involvement with the entity in his official capacity. Such recusal must conform to the standards of *N.J.A.C. 19:61-7.5(b)*.

3. Pursuant to *N.J.A.C. 19:61-3.1(e)*, if a member of the Commission holds office or employment in the same Department which employs a State official named in an allegation, he or she must disqualify himself or herself from participation in any decisional process relating to that particular case. One of the Commission meeting agenda items is an allegation that a Civil Service Commission employee has violated the Conflicts of Interest Law. Because the Commission Chair is the Chair of the Civil Service Commission, materials associated with this matter would not be forwarded to him or her. In addition, the Chairwoman would place her recusal and the reason for such recusal on the record at the meeting and leave the room during non-public deliberations.

4. A member of the Real Estate Commission (REC) is a Director and past President of the New Jersey Association of Realtors (NJAR). The NJAR currently opposes a regulation proposed by the REC, has submitted a letter outlining its position, and plans to attend the REC meeting to express its opposition to the regulation. Because the REC member is an officer of the NJAR, he must recuse himself from discussions and voting on the regulation in question.

5. The Governor signed an Environmental Act that requires the establishment of a nine member Oversight Council, four of whom must be county and municipal officials from the region. One of the municipal officials appointed to the Council was

recently elected and one of the county officials appointed to the Council recently lost his bid for State Senate. A local engineering firm made a substantial campaign contribution to the successful campaign of the municipal official, and another large donation to the county official's unsuccessful campaign for the State Senate.

Pursuant to *N.J.A.C. 19:61-7.4(c)*, the recently elected municipal official would have to recuse on those matters involving the engineering firm until his current term of office expires. If he sought re-election and received no contribution from the same engineering firm, the recusal rule would no longer be applicable once the new term commences.

Similarly, the county official who unsuccessfully sought a State Senate seat would also have to recuse from matters involving the engineering firm for the duration of the term of that Senate seat because the engineering firm's donation to his campaign could create the impression of conduct violative of his trust as a State official in his current position. If this county official subsequently runs for the State Senate seat again and he accepted another contribution from this engineering firm, he would also have to recuse for the next term of office for the State Senate seat.

#### § 19:61-7.5 Procedure for recusal

(a) If a State official finds, or is advised by agency counsel or the agency ethics liaison officer, that an incompatible financial or personal interest exists on a matter, the State official must recuse himself or herself from that matter or seek advice from the Commission. The recusal must be absolute, that is, the State official must have no involvement with the matter from which he or she has recused himself or herself.

(b) All recusals, other than those provided for in (c) below, must be memorialized in writing. A copy of the recusal statement must be forwarded to the Commission. See the subchapter Appendix for samples. The writing must:

1. Specify the reason for and the date of the recusal;
2. Specify the duration of the recusal (which may be expressed in terms related to the pendency of the matter in the State agency);
3. Specify the effect of the recusal on the State official and his or her State agency (for example, that the State official is not to be contacted or involved or participate in any manner concerning the matter from which he or she has been recused);
4. Name the person who is to assume responsibility and authority for the matter from which the State official has been recused (if applicable); and
5. Be disseminated to all persons who might be affected by the State official's recusal and to the agency ethics liaison officer, who shall maintain the writing for as long as the State official serves in his or her position.

(c) In the case of a State agency that maintains a public record of a proceeding, that is, a Board or Commission meeting, formal written recusal is not required; however, the following procedures must be followed:

1. To the extent feasible, meeting materials involving a matter from which the State official must recuse himself or herself should not be distributed to the State official;
2. At the subject meeting, the State official must place his or her recusal and the reason for such recusal on the record prior to any discussion of the matter; and
3. The State official must leave the room at a non-public portion of the meeting while the matter in question is under discussion.

## APPENDIX

### Sample Recusal Statements Sample Recusal Statement: Seeking Employment

DATE: \_\_\_\_\_  
TO: Agency Ethics Liaison Officer  
State Ethics Commission  
FROM: Name of Employee  
SUBJECT: Recusal -- Seeking Employment with (Name of Outside  
Organization)

This is to notify you that I am (seriously considering employment with, discussing employment with, or seeking employment with) (Name of Outside Organization).

My seeking employment may present an actual or appearance of a conflict of interest; therefore, I must disqualify/recuse myself from any official duties that involve the above organization. I understand that I may not participate in any way as a State official in any matters regarding the above organization. Furthermore, I understand that it would be appropriate for any matters specifically involving the above-named organization to be referred to my supervisor (or subordinate, if no other option) without consulting me or informing me that such matters are pending. This action is taken with the concurrence of my supervisor (or subordinate), as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that all employment seeking activity has terminated and I receive written permission from the agency ethics liaison officer to resume interactions with the outside organization.

	_____ Employee's Name
Recommend:	_____ (Name of Employee's Director/Supervisor)
	_____ Date
Approve:	_____ (Ethics Liaison Officer)
	_____ Date

### Sample Recusal Statements Conflicts

DATE: \_\_\_\_\_  
TO: Designee(s)  
FROM: Name of Employee  
SUBJECT: Recusal

Because I may be seen to have a conflict of interest in matters affecting (name of entity or Individual) relating to (family relationship, former affiliation with firm, etc.), I am delegating all responsibility and authority for handling any such matters to you. Please ensure that I am screened from any information or communications on any such matters.

By copy of this memorandum, I am instructing (appropriate contacts in office) to ensure that I do not receive any communications on any matters affecting (name of entity or individual). This recusal will remain in effect until (state duration of recusal).

c: subordinates responsible for screening communications  
Ethics Liaison Officer State Ethics Commission